

APR - 4 2008

IN THE
UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARY E. D'ANDREA, CLERK
Per Deputy Clerk

"In deed, no more than (affadivits) is necessary to make
the Prima facie case: United States v. Kis 658 F. 2d 526, 536
(7th Cir. 1981) Cert. Denied, 50 U.S. ..W. 2169; S.Ct. March 22, 1982

UNITED STATES OF AMERICA)	
Plaintiff,)	Case No. 1:CR-00-050-02
)	
v.)	JUDGE: WILLIAM W. CALDWELL
)	
KENNETH O. SIMMONS, Jr.)	AFFIDAVIT OF TRUTH AND
Petitioner.)	FACTS IN REGARDS TO THE
)	SENTENCING AND SENTENCE
)	OF KENNETH O. SIMMONS, Jr.

STATE OF PENNSYLVANIA)	
)	ss
CAMBRIA COUNTY)	(IN PRO PER)

I, Kenneth O. Simmons, Jr. (In pro per), am a follower of
Jesus Christ in the Greek, Yahshua in the Hebrew, the Messiah in
the Laws of the Almighty Supreme Creator, YHVH first and foremost
and the laws of man when they are not in conflict (Leviticus
18:3,4). Pursuant to Matthew 5:33-37 and James 5:12, Let my yea be
yea, and my nay be nay, as supported by Federal Public Law 97-280,
96 Stat. 1211. I have personal knowledge of the matters stated
herein, I am over the age 18 and hereby asseverate understanding
the liabilities presented in Briscoe v. Lahue 460 US 325.

1) I, Kenneth O. Simmons, Jr., in good faith prepared this
affidavit.

PREFACE

2) "The United States Attorney is the representative not
of an ordinary party to a controversy, but of a sovereignty whose
obligation to govern at all; and whose interest, therefor, in a

criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor indeed, he should do so, but while he may strike hard blows he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. U.S., 295 U.S. 78, 88 (1935)

3) "As an Attorney, it was my mandate to fight against authority when it was overbearing, abusive or unjust, but also to respect and believe in the system. When I challenged the system it was not from disrespect; rather, it was the ultimate form of respect. I understood then as I do today, that absent challenge, authority becomes totalitarian. Authority needs to be challenged if we are to ensure the integrity of the process. It is one of the great truths of our system." - Judge Harold J. Rothwax

AMENDMENT 706

4) I, Kenneth O. Simmons, Jr. demand 2 pt. reduction pertaining to the new Crack Sentencing Amendment.

TRUTH AND FACTS

1) On February 16th, 2000 Kenneth O. Simmons, Jr. was indicted by a superseeding indictment involving two other co-defendants for conspiracy to possess w/intent to distribute 50 grams or more of cocaine and cocaine base.

2) On June 5th Kenneth O. Simmons, Jr., exercised his 6th Amendment right to a jury trial.

3) On June 7th, 2000 the jury was instructed by the District Court not to consider nor determine the amount (50 grams alleged in the indictment) of drugs involved in the indictment or trial.

4) Drug amount was alleged in Kenneth O. Simmons, Jr. superseeding indictment and should have been submitted to the jury as a fact that must be proven beyond a reasonable doubt.

5) Drug amount is an element of the offense and is a fact that must be submitted to the jury and proven beyond a reasonable doubt.

6) The drug amount of 50 grams or more that was alleged in Kenneth O. Simmons, Jr. superseeding indictment was not submitted to the jury for factual determination for proof beyond a reasonable doubt. Therefore the sentence in this case is illegal and unconstitutional and must be vacated.

7) "The jury has a right to judge both the law as well as the fact in controversy." -- Chief Justice John Jay, U.S. Supreme Court Georgia v. Brailsford, 3 Dallas 1 (1794)

8) "It is not his right, but his duty... to find the verdict according to his own best understanding, judgement, and conscience though in direct opposition to the direction of the Court." -- John Adams

9) "The jury has the right to determine both the law and the facts." -- Samuel Chase, U.S. Supreme Court Justice, 1796 - Signer of the Declaration of Independence

10) 28 USC § 2072(b)... Says rights cannot be eliminated by rules.

11) "The pages of history shine on instances of the jury's exercise of its prerogative to disregard instructions of the judge...." U.S. v. Dougherty, 473 F. 2nd 1113 (1972)

12) "Jurors should acquit even against the judge's instructions... if exercising their judgement with discretion and honesty they have a clear conviction that the charge of the Court is wrong." -- Alexander Hamilton, 1804

13) "If a Juror accepts as law that which the Judge states, then that Juror has accepted the exercise of absolute authority of a Government employee and has surrendered a power and right that once was the Citizens Safeguard of Liberty." -- Elliot's Debates, Bancroft, 1788

14) "The law itself is on trial quite as much as the cause which is to be decided." -- Harlan F. Stone, 12th Chief Justice, U.S. Supreme Court, 1941

15) On June 8th, 2000 Kenneth O. Simmons, Jr. was found guilty by a general verdict, by jury, of conspiracy to possess w/intent to distribute cocaine base, as well as two firearm charges.

16) I, Kenneth O. Simmons, Jr. was not found guilty of an amount, was not found guilty of the fact that determines the penalty.

17) 50 grams or more, has a threshold amount of 150 grams which is penalized under statute 21 USC 841(b)1(a).

18) I, Kenneth O. Simmons, Jr. was not found guilty of 50 grams or more, 21 USC 841(b)1(a) statue charge in the indictment.

19) I, Kenneth O. Simmons, Jr. was not found guilty by jury trial verdict of any drug amount pertaining to the indictment that the Grand Jury handed down and sworn to.

20) I, Kenneth O. Simmons, Jr. was not tried nor found guilty by jury trial to the amount of 50 grams, 1.5 kilos, nor in excess of 40 kilograms of crack cocaine.

21) I, Kenneth O. Simmons, Jr. was sentenced on November 29th, 2000 to an amount of 1.5 kilos or more, Base level of 38, An amount that was not submitted to the jury as a fact that must be proven beyond a reasonable doubt.

22) I, Kenneth O. Simmons, Jr. was sentenced to 360 months to Life even though the jury verdict did not reflect the fact of amount that determines the penalty. The District Court sentencing was based on prejudice and bias.

23) I, Kenneth O. Simmons rights (6th Amendment) to a jury has been violated and I was denied my 5th Amendment rights to due process.

24) I, Kenneth O. Simmons, Jr. is entitled to and must be resented to 21 USC 841 (b)1(c) guideline sentencing catagory v, Level 12, 28-33 months for the least amount of cocaine base and cocaine 250 milligrams to 25 grams of cocaine powder since no amount was proven beyond a reasonable doubt, the least amount must be assumed or the indictment must be dismissed or a new jury trial awarded so that the facts can be determined.

25) Apprendi and Booker case law applies to the case of Kenneth O. Simmons, Jr., Apprendi was raised at sentencing on November 29th, 2000 (Quantity must be submitted and proven beyond a reasonable doubt by jury).

26) Due to the fact that I, Kenneth O. Simmons, Jr. has served 8 years 4 months imprisonment of a sentence rendered illegally due to no factual finding of an amount that would determine a penalty, I, Kenneth O. Simmons, Jr. must be immediately released. It is evident that 100 months has been served, well over due the 33 months max for sentencing level 12, category v.

27) In the "Word of God" forgiveness is available where there is repentance, I, Kenneth O. Simmons, Jr. has asked and received forgiveness, therefore no man has the right to punish me for my past. Wherefore I am praying for the employees because God's law is just like gravity, it works whether you believe in it or not!!

28) The first 100 years of American Lawyers were trained on Blackstone, who wrote: "The Law of Nature dictated by God himself is binding in all counties and at all times; no human laws are any validity if contrary to this; and such of them as are valid derive all force and all their authority from this original; The framers created a government of limited power with this understanding of the rule of law - that it was dependent on transcendent religious obligation." -- The Gideon Society assures us due process, public notice and opportunity.

29) According to the Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are Life, Liberty and the Pursuit of Happiness that to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed."

CAVEAT

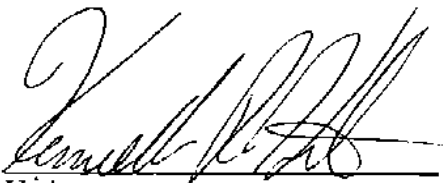
30) "An avidity to punish is always dangerous to liberty. It leads men to stretch to misinterpret, and to misapply even the best of Laws, He that would make his own liberty secure must guard even his enemy from oppression; For if he violates this duty he establishes a precedent that will reach to himself." -- Thomas Paine


31) I am not an expert at Law, however, I do know right from wrong. If there is any human being damaged by any statements herein, if he will inform me by facts I will sinicerely make every effort to amend my ways. I hereby and herein reserve the right to amend and make amendment to this document as necessary in order that the truth may be ascertained and proceedings justly determined. If the parties given notice by means of this document have information that would controvert and overcome this affidavit, please advise me in written affidavit form within (30) days from receipt hereof providing me with your counter-affidavit, proving with particularity by stating all requisite actual evidentiary fact and all requisite actual law, and not merely the

ultimate facts or conclusions of law, that this affidavit statement is substantially and materially false sufficiently to change materially my status and factual declarations. Your silence stands as consent to, and tacit approval of, the factual declarations herein being established as fact as a matter of law. May the will of our Heavenly Father **Yahvah**, through the power and authority of the blood of his son **Yahshua** be done on Earth as it is in Heaven.

Reserving all natural God-Given unalienable birthrights, waving none, ever, I declare under penalty of perjury under the Laws of the United States of America that the foregoing is true and correct 28 USC § 1746(1)

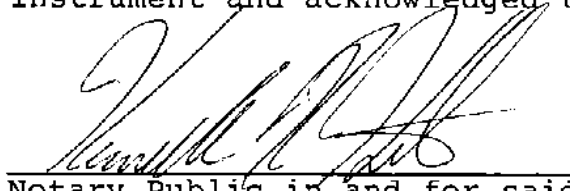
Signed on this 26 day of the March month in the year of our Lord and Savior two thousand eight.


Witness

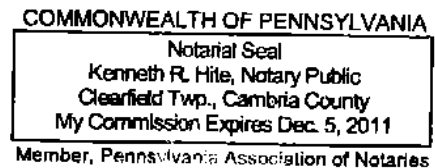

Kenneth O. Simmons, Jr.
Without Recourse

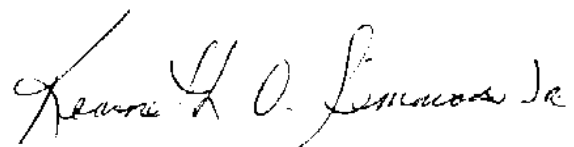
Jurat

Subscribed to and sworn before me this 26 day of March A.D. 2008, A Notary, that Kenneth O. Simmons Jr., personally appeared and known to me to be the man whose named subscribed to the within instrument and acknowledged to be the same.

 (Seal)
Notary Public in and for said State

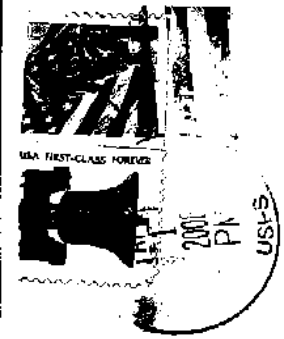
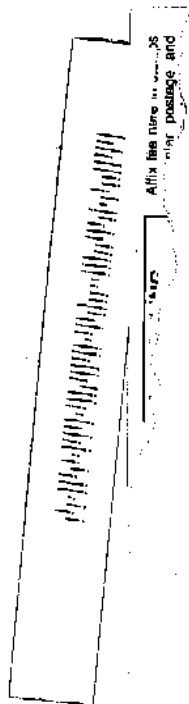
My commission expires; 12/5/2011





Kenneth Simmons Jr
[09983-0677]
Frederick Collection Institution
"Leeds"

P.O. Box 1000
Leeds PA [15940]



Judge William Caldwell
Clerk of the Court
United States District Court
Federal Building
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Harrisburg, Pennsylvania [17108]

1/10/08
JSC